

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

MISC.CIVIL APPLICATION NO.129 OF 2020

**SHRUTIKA TUSHAR SHER
VERSUS
TUSHAR RANJITSINGH SHER**

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Advocate for Applicant : Ms. Chhaya Gaikwad
Advocate for Respondent : Mr. G. L. Gujar h/f. Mr. A. S. Sawant

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CORAM : MANGESH S. PATIL, J.

DATED : 06 JUNE 2022

PER COURT :

1. This is an application under section 24 of the Code of Civil Procedure by a wife facing a proceeding under section 9 of the Hindu Marriage Act, 1955, for restitution of conjugal rights filed by the respondent which is pending in the Family Court at Nagpur. She is seeking to transfer that proceeding to a court of competent jurisdiction at Aurangabad.
2. I have heard learned advocates of both the sides.
3. The respondent has not filed any affidavit-in-reply.
4. There is no dispute about the fact that since after the parties got separated, the applicant has been staying in the jurisdiction of the court at Aurangabad. She has filed couple of proceedings; one under the protection of

Women from Domestic Violence Act, 2005 and one for maintenance under section 125 of the Code of Criminal procedure against the respondent – husband in the court at Aurangabad. She has two and half years old son in her custody. The restitution proceeding is going on at Nagpur, which is more than 500 Kms. Obviously, the applicant will have to face hardship, if she is required to defend the restitution proceeding by commuting between Aurangabad and Nagpur. As she belongs to weaker section, the court will have to lean in her favour.

5. As it is, the respondent- husband must be coming down to Aurangabad to defend couple of proceedings initiated by the applicant – wife and would not face much of difficulties if he is made to prosecute his petition for restitution, even if it is transferred to Aurangabad. On the other hand, the applicant would face greater hardship, if she is required to go to the court at Nagpur.

6. In the absence of any affidavit-in-reply, it cannot be said that the applicant has any independent source of income sufficient enough for her to spend for commutation between Aurangabad and Nagpur. The respondent seems to be in an employment drawing regular salary of more than Rs. 18,000/- per month.

7. Taking into consideration all the aforementioned facts and circumstances, the application deserves to be allowed.

8. The application is allowed.
9. Petition No.A-289 of 2020 filed by the respondent under section 9 of the Hindu Marriage Act, 1955 pending in the Family Court at Nagpur stands transferred the court of civil judge senior division at Aurangabad.
10. The parties shall appear before that court on 02-07-2022 and there shall be no need for that court to issue any notice to them.
11. The courts in which the matters between the parties are going on at Aurangabad including the matter that is being transferred shall as far as possible list the matter on the same day.

(MANGESH S. PATIL, J.)